IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.880 OF 2003
IN
SUMMARY SUIT NO.1713 OF 2003

Rakesh Ramesh Mehta Plaintiff

versus

Vijay Pravin Kachalia Defendant

Mr.V.J.Mehta i/by D.C.Mehta & Associates for plaintiff.

Mr.P.M.Shah for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th July 2005

PC :

1. Heard learned counsel appearing for plaintiff and defendant.

2. Present suit is filed under Order XXXVII of CPC on the basis of Exhibit-A. Exhibit-A is a Bill of Exchange dated 3rd April 2000. It is signed, according to the plaintiff, by the defendant. The name and style of the defendant's business and his address are mentioned on the bill of exchange. It is the case of the defendant that this bill of exchange was executed

in consideration of the defendant advancing a sum of Rs.1.00 lakh as a business loan. According to the plaintiff, defendant approached him through his father. After bill of exchange was executed, interest as agreed i.e. @ 15% p.a. was paid at the end of every quarter i.e. June, September, December and March. The plea of the plaintiff in para 7 is that interest up to the quarter of July, August and September was paid and thereafter nothing was paid either towards interest or principal. A notice of demand was issued after the bill of exchange was dishonoured. On presentation and in reply to the same, the defendant has stated that the averment and allegation that bill of exchange was executed is false. Similarly, no friendly loan was taken. Execution of bill of exchange and the loan transaction itself was denied. After sending a rejoinder to the said letter, ultimately present suit has been filed for recovery of a sum of Rs.85,000/- and interest thereon.

3. In affidavit in reply to the Summons for Judgement the defendant in para 4 states that on 30th June 2002 a settlement was arrived at between the plaintiff and the defendant and the plaintiff in his own handwriting prepared a

statement of account from 1st October 2000 till 30th June 2002 in which reference is made to the amount received by the plaintiff and it is stated that a sum of Rs.4,55,800/- was received in all to settle the claims of the father of the plaintiff as well as plaintiff and his brothers. Exhibit-1, according to the affidavit in reply, is the handwritten statement. Mr.Shah for the defendant submits that apart from the fact that present suit is not maintainable as a summary suit, in addition, execution of the statement by the plaintiff in writing shows that nothing is due and payable.

4. Learned advocate appearing for the plaintiff relies upon orders passed by this Court in Summons for Judgement No.712 of 2003 in Summary Suit No.1354 of 2003 wherein identical pleas were raised. This suit was filed by the brother of plaintiff against present defendant. Justice Karnik disbelieved all these pleas and by order dated 25th April 2005 granted conditional leave on deposit of a sum of Rs.85,000/-.

5. Mr.Shah contends that the said order cannot be relied upon by the plaintiff because in rejoinder filed to the affidavit in reply to the

present Summons for Judgement, the plaintiff himself has expressed a doubt about nature of Exhibit-A. He has made a statement on oath that Exhibit-A may not amount to bill of exchange but is a printed document brought from market and has been filled in by himself. It is, therefore, a bill of exchange. That apart, he also relies upon the fact that original loan was advanced to the defendant in 1997 and at the end of every financial year the defendant approached the plaintiff with a request that he would return the principal amount of money to the plaintiff and on the opening of the next financial year it was again advanced by the plaintiff to the defendant. The above arrangement being pleaded by the plaintiff himself and the original loan of 1997, present summary suit to recover claim on the basis of alleged bill of exchange dated 3rd April 2000 is not maintainable is the submission of Mr.Shah.

6. I have perused relevant materials including plaint and annexures thereto. In my view, the defendant has taken inconsistent pleas. The first plea raised is that there was no transaction at all. The second plea is that even if there is any transaction, the bill of exchange

is not executed at all. This is the stand taken in reply to the suit notice. However, that is given up and in the affidavit in reply reliance is placed upon Exhibit-1 which according to the defendant is a hand-written statement. Brother Karnik, J. in his detailed order on Summons for judgement in a summary suit between the same parties on identical claim, has disbelieved both these versions. He has given reasons for disbelieving the same. The inconsistent stand of the defendant cannot be of any assistance to him. Apart from the fact that Exhibit-1 could hardly constitute a writing, it will not be open for the defendant to raise pleas which are not raised by him on the strength of the affidavit in rejoinder. It would be unjust to permit defendant to rely upon affidavit in rejoinder and pick and choose statement made therein and rely upon them out of context. In para 9 of the affidavit in rejoinder the plaintiff has raised without prejudice contentions. It is not as if the plaintiff is in doubt about the nature of the claim or about the documents. Further, while meeting the case of the defendant that there was no transaction at all, the plaintiff has made statements in para 14 of the affidavit in rejoinder. As observed above, the said affidavit

will have to be read as a whole and cannot be construed as making out a case inconsistent with the plaint averments. In my view, Brother Kranik, J. was right in disbelieving the versions of the defendant. That version is identical to the one before me.

7. In my view, therefore, interest of justice would be served if the defendant is granted an opportunity to make good his case on affidavit but at the same time imposing condition on him to deposit the principal sum claimed in the present suit. It is because of the fact that some pleas are raised before me and reliance is placed on the affidavit, that I feel that an opportunity deserves to be granted to the defendant. Therefore, following order.

8. ORDER :- On the defendant’s depositing a sum of Rs.85,000/- in this Court within a period of eight weeks from today, conditional leave to defendand to defend the suit. On deposit, the suit shall stand transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection. Needless to state that if the deposit is not made, further consequences in law would follow.

(S.C.DHARMADHIKARI, J.)